

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Case No.: 2:17-cv-00582-JAD-GWF

4 Osvaldo Garcia,

5 Plaintiff

Order Dismissing Case

6 v.

7 State of Nevada, et al.,

8 Defendants

9
10 Plaintiff Osvaldo Garcia brings this civil-rights case under § 1983 for events he alleges
11 occurred during his incarceration. On January 16, 2019, the magistrate judge denied his
12 application to proceed *in forma pauperis* for prisoners without prejudice because Garcia is no
13 longer incarcerated and gave Garcia 30 days to file a fully completed application for non-
14 prisoners or pay the \$400 filing fee.¹ The court expressly warned him that his failure to file the
15 completed application for non-prisoners or pay the filing fee by that deadline would result in the
16 dismissal of this case without prejudice.² The deadline has passed, and Garcia has done neither,
17 so I dismiss this case.

18 District courts have the inherent power to control their dockets and “[i]n the exercise of
19 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A
20 court may dismiss an action with prejudice based on a party’s failure to prosecute an action,
21 failure to obey a court order, or failure to comply with local rules.⁴ In determining whether to

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23 ¹ ECF No. 10 (order).

24 ² *Id.*

25 ³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

26 ⁴ *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
27 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
28 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
2 local rules, the court must consider several factors: (1) the public's interest in expeditious
3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
5 availability of less drastic alternatives.⁵

6 I find that the first two factors—the public's interest in expeditiously resolving the
7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action.⁶ The fourth factor is greatly outweighed by the factors in favor of
11 dismissal, and a court's warning to a party that his failure to obey the court's order will result in
12 dismissal satisfies the consideration-of-alternatives requirement.⁷ Garcia was warned that his
13 case would be dismissed without prejudice if he failed to file a fully completed application for
14 non-prisoners or pay the \$400 filing fee.⁸ So, Garcia had adequate warning that his failure to pay
15 the fee or submit a completed application for non-prisoners would result in this case's dismissal
16 without prejudice.

21 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
22 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
23 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁵ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁶ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁷ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ⁸ ECF No. 10 (order).

1 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without
2 prejudice based on Garcia's failure to file a fully completed application for non-prisoners or pay
3 the \$400 filing fee in compliance with this Court's January 16, 2019, order; and
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5 The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS
6 CASE.

7 Dated: February 22, 2019

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9 
U.S. District Judge Jennifer A. Dorsey